

FILED & ENTERED

OCT 12 2017

CLERK U.S. BANKRUPTCY COURT
Central District of California
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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re:

Palmdale Hill Property, Inc. and related
Debtors

Debtor(s).

CHAPTER 11

Case No.: 8:08-bk-17206-ES
Adv No: 1:16-ap-01120-GM

**MEMORANDUM OF DECISION AND
ORDER GRANTING IN PART TRUSTEE'S
MOTION FOR CORRECTION OF ORDER
GRANTING IN PART AND DENYING IN
PART THE TRUSTEE'S MOTION FOR
PARTIAL SUMMARY ADJUDICATION (Dkt.
482)**

Steven M Speier

Plaintiff(s),

v.

Argent Management, LLC, SunCal
Management LLC

Defendant(s).

Date: October 3, 2017
Time: 10:00 a.m.
Courtroom: 303

Background

Plaintiff Stephen M. Speier (the "Trustee"), as chapter 11 trustee for debtor

SunCal Marblehead, LLC (the “Debtor”), brought a motion for partial summary adjudication (the “MPSA”) of his restitution and/or unjust enrichment claim for relief against SunCal Management, LLC (“SCM”). Defendants SCM and Argent Management, Inc. (the “Defendants”) opposed the MPSA.

On August 2, 2017, the Court entered an order (dkt. 470; the “Order”) and a memorandum of decision (dkt. 471; the “Memorandum of Decision” or “Memorandum”), which granted the MPSA in part and denied the MPSA in part.

The Trustee has filed a motion for correction of the Order (dkt. 482; the “Motion to Correct”), the Defendants have filed an opposition to the Motion to Correct (dkt. 498), and the Trustee has filed a reply to that opposition (dkt. 499). In support of the corrections requested in the Motion to Correct, the Trustee is essentially arguing that the Order is potentially ambiguous and inconsistent with the reasoning and language of the Memorandum of Decision.

Operative Language of the Order

The Motion is granted in part and denied in part.

The Court grants summary adjudication to the Trustee on the following issues:

1. The Trustee has established a claim for unjust enrichment/restitution for the management fees paid by the Debtor to SCM (the “Management Fees”), except for the following issues:

- Voluntary Payment Doctrine: Whether the Debtor’s payments of Management Fees to SCM were made voluntarily and with the knowledge that the Debtor had no legal obligation to pay the Management Fees to SCM.*
- Incidental Benefit Doctrine: Whether the Debtor had legal obligations to pay the Management Fees or whether these Management Fees were paid to protect or improve the Debtor’s property.*

2. The Defendants have failed to establish any defenses to the unjust enrichment/restitution claim, except for Laches and Statute of Limitations, which the Defendants may continue to assert.

The Motion is otherwise denied.

Corrections: Operative Language Proposed in the Motion

The Motion is granted in part and denied in part.

1 *1. The Trustee has established as a matter of undisputed fact both elements of a*
2 *claim for unjust enrichment under California law: benefit conferred and unjust*
3 *enrichment.*

4 *a. The Trustee has established as a matter of undisputed fact that SCM*
5 *received a benefit of \$9,163,489 in the payment of management fees (the*
6 *"Management Fees") from the Debtor; and*

7 *b. The Trustee has established as a matter of undisputed fact that SCM's*
8 *retention of \$9,163,489 in Management Fees is unjust as SCM has no*
9 *legal right to the funds it received from the Debtor and SCM was or should*
10 *have been aware of the circumstances which give rise to the Trustee's*
11 *restitution and/or unjust enrichment claim for relief.*

12 *2. The Court further finds Defendants have failed to raise genuine issues of*
13 *material fact as to any of their affirmative defenses to the Trustee's unjust*
14 *enrichment/restitution claim except for the following affirmative defenses which*
15 *the Defendants may continue to assert:*

16 *a. Voluntary Payment Doctrine: Whether the Debtor's payments of*
17 *Management Fees to SCM were made voluntarily and with the knowledge*
18 *that the Debtor had no legal obligation to pay Management Fees to SCM;*

19 *b. Incidental Benefit Doctrine: Whether the Management Fees were paid*
20 *to protect or improve the Debtor's property.*

21 *c. Laches: Whether the Debtor's delay from 2005 to 2008 in asserting its*
22 *claim for unjust enrichment/restitution was reasonable or excusable; and*

23 *d. Statute of Limitations: Whether the Trustee's unjust*
24 *enrichment/restitution claim is timely.*

25 Analysis of Proposed Changes

26 This Motion presents a very limited issue: whether the Trustee's corrections
27 proposed in the Motion to Correct (the "Corrections") are both consistent with the
28 Memorandum of Decision and necessary to clearly effectuate the Court's rulings in the
Memorandum of Decision. The Trustee's reasons for his proposed changes and the
Court's analysis as to whether the Corrections are necessary and consistent with the
Memorandum of Decision are discussed below.

The Defendants' opposition does not address whether the Corrections are
consistent with the Court's ruling in the Memorandum. Instead, it essentially seeks
reconsideration of the Court's ruling in the Memorandum and Order and asks the Court
to *sua sponte* grant summary judgment to SCM. Thus, the arguments in the opposition
are not useful to the Court's analysis of the issue presented in this Motion to Correct.
(Furthermore, as the Trustee notes in his reply, the Defendants' request is procedurally
improper. The Defendants are free to bring their own motion for summary judgment.)

1 (a) Motion to Correct: The Order is potentially ambiguous as it implies that the
2 Trustee has not established his case in chief, even though the Memorandum of
3 Decision states that the Trustee has done so. Thus, in No. 1 the Proposed Order adds
4 (i) findings with respect to each element of unjust enrichment and (ii) the phrase “as a
5 matter of undisputed fact” before each finding.

6 Analysis: These more detailed findings in the Corrections generally add clarity
7 and are consistent with the Court’s analysis in the Memorandum of Opinion. However,
8 the level of detail added to the finding in 1.b. (that SCM’s retention of management of
9 fees was unjust) does not appear to be warranted and may create ambiguity.

10 First, the Corrections add the reason for finding SCM’s retention of management
11 fees to be unjust: “SCM had no legal right to the fees.” However, the rationale for the
12 finding is set forth clearly in the Memorandum. There is no plainly evident reason to
13 include it in the Order. The Court is wary of summarizing its reasoning in the Order, lest
14 that summarization take on a life its own and be used in ways inconsistent with the
15 reasoning of the Memorandum of Decision.

16 Second, the Corrections add a second half to the reason for finding SCM’s
17 retention unjust: “SCM was or should have been aware of the circumstances giving rise
18 to the Trustee’s restitution and/or unjust enrichment claim for relief.” The California
19 Supreme Court in *Ghirardo v. Antonioli*, 14 Cal. 4th 39 (Cal. 1996), used lack of
20 knowledge by the Plaintiff as an *exception* to the rule that retention of property without
21 legal entitlement is unjust, not as additional requirement for establishing “unjust”
22 retention. See Memorandum of Decision at 26:26-28. The Memorandum considered
23 and rejected several other such exceptions (*i.e.*, doctrines that might have prevented
24 SCM’s retention from being unjust, such as the existence of a governing contract and
25 “receipt of the exchange expected.”) The Order is not explicitly finding that these other
26 potential exceptions do not apply; putting only one exception in the Order is inconsistent
27 and creates potential ambiguity.

1 (b) Motion to Correct: The Order states (under the Incidental Benefit Doctrine) that
2 there is still an issue as to “Whether the Debtor had legal obligations to pay the
3 Management Fees,” while the Memorandum of Opinion acknowledges that this Court
4 has previously held that the Debtor did not have a legal obligation to pay the
5 Management Fees (and this holding is law of the case). Memorandum of Decision at
6 22:24-27; 26:2-10. Thus, the Proposed Order takes this language out.

7 Analysis: The Memorandum found that the Debtor had no legal obligation to pay
8 management fees *to SCM*. It is the Debtor’s potential obligation to pay management
9 fees to *other parties* that remains a disputed issue of fact in the Incidental Benefit
10 Doctrine. This change is inconsistent with the Memorandum.

11
12 (c) Motion to Correct: The Order states that SCM has “failed to establish any
13 defenses . . . except for Laches and Statute of Limitations.” This implies that the
14 Trustee has established Laches and Statute of Limitations. Thus, the Proposed Order
15 uses “failed to raise genuine issues of material fact as to any of their affirmative
16 defenses” instead (which is consistent with the Memorandum).

17 Analysis: This change is well taken and consistent with the Memorandum.

18
19 (d) Motion to Correct: The Voluntary Payment Doctrine and the Incidental Benefit
20 Doctrine are affirmative defenses and should be moved to ¶ 2.

21 Analysis: The Voluntary Payment Doctrine is an affirmative defense. See *Twin*
22 *City Fire Ins. Co. v. Hartman, Simons & Wood, LLP*, 609 F. App’x 972, 978 (11th Cir.
23 2015); *Ellsworth v. U.S. Bank*, 908 F. Supp. 2d 1063, 1083 (N.D. Cal. 2012); *Fradis v.*
24 *Savebig.com*, 2011 WL 7637785, at *7 (C.D. Cal. Dec. 2, 2011).

25 It has not been shown that Incidental Benefit Doctrine is an affirmative defense.
26 The case cited by the Trustee (*Hartford Cas. Ins. Co. v. J.R. Mktg.*, 61 Cal. 4th 988,
27 1001 (2015)) does not support this proposition (or even mention the phrase “affirmative
28 defense.”) Furthermore, the language of cases employing the Incidental Benefit

1 Doctrine indicates that incidental benefits prevent enrichment from becoming unjust. In
2 other words, incidental benefit precludes the plaintiff from ever having an unjust
3 enrichment claim. See, e.g., *Unilab Corp. v. Angeles-IPA*, 244 Cal. App. 4th 622, 639–
4 40 (2016), as modified (Feb. 1, 2016), review denied (May 11, 2016), and cases
5 discussed therein; 1 Witkin, Summary 10th, Contracts, § 1020 (2005)(“where the
6 plaintiff acts in performance of his own duty or in protection or improvement of his own
7 property, any incidental benefit conferred on the defendant is not unjust enrichment”).

8 Accordingly, only the Voluntary Payment Doctrine should be moved to ¶2.

9
10 (e) Motion to Correct: In ¶2, the Corrections added a description of the issue of
11 disputed fact for the affirmative defenses of Laches and Statute of Limitations.

12 Analysis: These descriptions are consistent with the Memorandum and do add
13 clarity and consistency to the Order.

14
15 **Ruling and Order:**

16 The Motion to Correct is hereby granted in part. Pursuant to the analysis above,
17 the Court will enter an amended Order with the following operative language:

18 *The Motion is granted in part and denied in part as follows:*

19 *1. With the exception of one issue of disputed fact (described in .b below), the*
20 *Trustee has established as a matter of undisputed fact both elements of a claim*
for unjust enrichment under California law: benefit conferred and unjust
enrichment.

21 *a. The Trustee has established as a matter of undisputed fact that SCM*
22 *received a benefit of \$9,163,489 in the payment of management fees (the*
“Management Fees”) from the Debtor; and

23 *b. The Trustee has established as a matter of undisputed fact that SCM’s*
24 *retention of \$9,163,489 in Management Fees is unjust, unless the*
25 *Incidental Benefit Doctrine applies. The applicability of the Incidental*
26 *Benefit Doctrine, which is dependent on whether the Debtor had legal*
obligations to entities other than SCM to pay the Management Fees or
whether these Management Fees were paid to protect or improve the
Debtor’s property, remains a disputed issue of fact.

27 *2. The Defendants have failed to raise genuine issues of material fact as to*
28 *any of their affirmative defenses to the Trustee’s unjust enrichment/restitution*
claim except for the following affirmative defenses, which the Defendants may
continue to assert:

a. Voluntary Payment Doctrine: Whether the Debtor’s payments of
Management Fees to SCM were made voluntarily and with the knowledge

1 *that the Debtor had no legal obligation to pay Management Fees to SCM;*
2 *b. Laches: Whether the Debtor's delay from 2005 to 2008 in asserting its*
3 *claim for unjust enrichment/restitution was reasonable or excusable; and*
4 *c. Statute of Limitations: Whether the Trustee's unjust*
5 *enrichment/restitution claim is timely.*

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Date: October 12, 2017



Geraldine Mund
United States Bankruptcy Judge